U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30470588

Date: MAY 10, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a process engineering manager, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for this classification through evidence of a one-time achievement (a major, internationally recognized award) or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The Petitioner subsequently filed a combined motion to reopen and motion to reconsider, which the Director dismissed. The Petitioner now appeals the Director's dismissal of the combined motions. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(l)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a

major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

As a preliminary matter, we emphasize that the Petitioner has not appealed the April 6, 2023 denial of the Form I-140 itself, but rather the Director's subsequent dismissal of his combined motions to reopen and reconsider dated September 1, 2023. In the September 2023 decision, the Director did not affirm the prior denial but rather, the Director concluded that the motions did not meet the applicable requirements. Therefore, the question before us on appeal is whether the Director erred in dismissing the combined motions. Although the April 2023 denial is not before us, we will refer to portions of that decision for context.

The Petitioner initially claimed that he satisfied six of ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3), summarized below:

- (i), documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- (ii), membership in associations that require outstanding achievements;
- (iv), participation as a judge of the work of others;
- (v), original contributions of major significance;
- (viii), leading or critical role for distinguished organizations or establishments; and
- (ix), high remuneration for services.

In denying the petition, the Director determined that the Petitioner submitted evidence related to six of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and concluded he satisfied only one criterion. Specifically, the Director concluded the Petitioner met his burden to demonstrate a leading or critical role for distinguished organizations or establishments under 8 C.F.R. § 204.5(h)(3)(viii). On combined motions to reopen and reconsider and on appeal, the Petitioner does not pursue his initial claims that he meets the criteria relating to lesser awards, membership in associations, and participations as a judge, nor does he contest the Director's conclusions regarding these issues. We therefore consider those issues abandoned.[1]

[1] *See Matter of R-A-M-*, 25 I&N Dec. 657. 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2

As noted, the Director dismissed the Petitioner's combined motion to reopen and motion to reconsider. The Director noted that although the Petitioner submitted new documents on motion, the supporting documents "came into existence" after the initial filing date of the original Form I-140. The Director also noted the Petitioner failed to state a reason for reconsideration and did not indicate that the decision was based on an incorrect application of law or USCIS policy.

On appeal, the Petitioner contends the Director disregarded the motion without a proper review of the statements contained in the brief, and that were heavily supported by pieces of evidence, to demonstrate the Petitioner is a "well-known" process engineering manager. The Petitioner also "agrees that a petitioner is not encouraged to submit essentially new facts and evidence that had not been in existence at the time of the filing" but the Petitioner contends that what is important is whether the facts and information within the documents occurred prior to the date of filing.

A. Motion to Reopen

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). A motion to reopen is designed to afford a petitioner an opportunity to submit new facts—facts that existed on the date a petition was filed—and to support those facts with evidence. It is not intended to allow a petitioner to improve upon the previously deficient claims that failed to meet the clearly identified eligibility requirements. And as we noted, on motion a petitioner must still establish eligibility at the time of filing; a petition cannot be approved at a future date after a petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). We generally do not "consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981)). Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008).

Upon review of the documentation the Petitioner submitted on motion, we agree with the Director that several of the submitted documents affirm facts about the Petitioner that occurred after the filing of the instant petition.

For example, the Petitioner submitted documentation to satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ix) to establish he commands a high remuneration for services, but those documents verified his salary in 2023, nearly two years after he filed the Form I-140 in July 2021. On motion, the Petitioner submitted an offer letter it executed with [redacted] on January 25, 2023. The letter indicated an offer of the position of project manager, powertrain, with the anticipated start date of March 12, 2023, and indicated the Petitioner would earn an annual base salary of $150,000, an equity award, and a target incentive bonus. The Petitioner also submitted three copies of his pay statements in 2023, and an email dated March 31, 2023, that notified the Petitioner that his [redacted] restricted stock units were issued. USCIS regulations affirmatively require a petitioner to establish

(11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

On motion, the Petitioner also submitted documentation in support of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field pursuant to 8 C.F.R. § 204.5(h)(3)(v). The Petitioner submitted a recommendation letter from the Senior Management – Manufacturing Engineering Manager at [redacted] outlining the Petitioner's contributions to the company. The author stated the Petitioner "helped tremendously in industrializing zero emission electric vehicle" for [redacted] As noted above, the offer letter with [redacted] indicated a March 12, 2023 employment start date and therefore, this recommendation letter is discussing the Petitioner's contributions that occurred nearly two years after the original petition was filed. On motion, the Petitioner also submitted an outline of his job duties at [redacted] and a [redacted] communication notice regarding a company initiative. As noted in the Director's decision, all these documents provide information about the Petitioner that transpired after he filed the Form I-140.

The Petitioner also submitted two additional recommendation letters for work performed prior to filing the Form I-140. The primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022) (citing *Visinscaia*, 4 F. Supp. 3d at 134. The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The first letter is from an individual from [redacted] that has known the Petitioner for more than 10 years in a "mentor & mentee relationship." The author stated that the Petitioner has helped with developing and articulating materials to use in various training programs, and one of his procedures was published by the World Wildlife Fund for the distribution purposes for this company. The second letter from [redacted] indicated they know the Petitioner for 13 years and worked with him in a "supplier and customer relationship." The author stated the Petitioner's "professional and out of the way efforts and commitment for development helped us to have innovative solutions for our upcoming machines," and his "contribution helped us develop as competitive and efficient equipment manufacturers."

The Petitioner contends he submitted his information about the contributions he made to current and former employers; however, the letters do not contain detailed, specific information explaining how the Petitioner's leadership resulted in original contributions of major significance in the field. Instead, the letters make vague and general statements and do not provide a true understanding of an original contribution of major significance. The Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his leadership has had on the overall field. Letters

that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value. On the other hand, letters that lack specifics and use hyperbolic language do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.[2] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

B. Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must establish that the prior decision was incorrect based on the evidence of record at the time of that decision. *See* 8 C.F.R. § 103.5(a)(3). In the motion to reconsider, the Petitioner alleged no specific error in the April 2023 denial notice. The motion brief did not contend that the Director's decision was based on an incorrect application of law or policy, nor was it supported by any relevant caselaw, statute, or regulation. Since the motion did not meet the requirements identified above, the Director properly dismissed the motion to reconsider.

On appeal, the Petitioner focuses on the evidence submitted in the motion to reopen. The Petitioner does not establish that the Director should have granted the concurrent, but procedurally separate, motion to reconsider.

For the reasons discussed, the Petitioner has not established that the Director's dismissed his combined motions in error or otherwise overcome the basis for the prior decision.

III. CONCLUSION

As explained above, the Petitioner has not shown that the Director should have granted the combined motion to reopen and motion to reconsider. Because the Petitioner has not overcome the Director's September 2023 decision dismissing those motions, we will not directly address the April 2023 denial or the merits of the underlying petition.

ORDER: The appeal is dismissed.

[2] *See Kazarian*, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).